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06-15-06

02:31 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

Rulemaking 06-03-004
(Filed March 2, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING
ISSUING COLLABORATION GUIDELINES**

The scoping memo issued in this proceeding on April 25, 2006, stated that the California Energy Commission (CEC) staff had participated as collaborative state agency staff in the predecessor rulemaking to this docket, namely Rulemaking (R.) 04-03-017, and that CEC staff would act in a similar capacity in this proceeding. This ruling provides further clarification concerning the collaboration between this Commission and the CEC in this proceeding regarding the California Solar Initiative (CSI).

Collaboration Guidelines

This Commission appreciates and reaffirms its close working relationship with the CEC on distributed generation issues, which now include the CSI, and herein extends a collaboration that began in 1998 with R.98-12-015 and continued through several additional rulemakings, the last of which was R.04-03-017. As has been the case in the past, the Commission's Executive Director may work with the CEC's Executive Director to review and refine the terms of the collaboration and the staff involved in it.

As an initial matter, this ruling designates certain staff of the CEC as CSI Collaborative Staff. They are identified by name in Attachment A of this ruling. Should the CEC wish to add or subtract Collaborative Staff members, it should send an electronic notice to all parties with the name or names of the members. Any such proposed changes are automatically effective five days after the notice is sent.

As a practical matter, the CEC's CSI Collaborative Staff will be functioning like the Commission's own advisory staff for purposes of this proceeding. As part of the collaborative process, the CSI Collaborative Staff may become aware of confidential or privileged information. The Commission has not waived any confidentiality or privilege by such disclosure, and (just like the Commission's advisory staff) the CSI Collaborative Staff should maintain the confidentiality of such information and all of the Commission's applicable privileges. To facilitate this requirement, all CPUC documents containing confidential or privileged information that may be shared with the CSI Collaborative Staff shall be clearly marked or labeled to indicate their confidential or privileged nature, to the extent possible. In addition, the CEC shall ensure that these confidential or privileged documents are exempt from public disclosure under its regulations for confidential designation (20 CCR section 2501, et seq.).

Again, similar to the Commission's advisory staff, the CSI Collaborative Staff are neither decision makers nor parties to this proceeding, and accordingly are not subject to the Commission's *ex parte* rules. The CSI Collaborative Staff are free to communicate with decision makers at both the CPUC and CEC, and with parties to the proceeding.

This issue is somewhat complicated by the fact that the CEC may be a party to other Commission proceedings. The CEC in its role as a litigant in other

proceedings should not gain an unfair advantage by obtaining inside information that is unavailable to other litigants. While the CSI Collaborative Staff is free to communicate with decision makers and CEC staff, CSI Collaborative Staff cannot provide CEC litigation staff (or any other party) with information obtained from the collaborative process that could possibly provide a litigation advantage. Also, members of the CSI Collaborative Staff cannot litigate or assist in litigation before the Commission on issues closely related to the issues on which they are working as CSI Collaborative Staff.¹ In essence, members of the CSI Collaborative Staff can only wear one hat when it comes to the issues that are addressed in this proceeding.

The obligations to maintain the Commission's privileges and to avoid providing an unfair advantage to a party in a Commission proceeding do not terminate with the end of this proceeding or the end of an individual member's tenure as CSI Collaborative Staff. Accordingly, the above restrictions continue to apply even after the conclusion of this proceeding, and to former members of the CSI Collaborative Staff. To safeguard against the inadvertent disclosure of confidential and privileged information, CEC members of the CSI Collaborative Staff will return or destroy all confidential or privileged records they have received from the CPUC as part of the collaborative process at the conclusion of this proceeding, or upon their removal from the CSI Collaborative Staff, whichever occurs first.

The passage of time, however, will eventually make the information obtained in the collaborative process less significant, although privileges do not

¹ The meaning of "closely related" is fact-specific, and will be determined on a case-by-case basis.

generally expire. If former CEC members of the CSI Collaborative Staff desire to disclose privileged or confidential information obtained as part of the collaborative process after the conclusion of this proceeding, a written request must be submitted to the Commission's General Counsel to obtain authorization for such disclosure. The limitation on CSI Collaborative Staff litigating or assisting in litigation before the Commission expires two years after the conclusion of this proceeding.²

Members of the CSI Collaborative Staff may contact the Commission's Legal Division with any questions relating to these guidelines.

IT IS RULED that:

1. The CEC staff identified in Attachment A of this ruling shall work collaboratively with Commission advisory staff in this proceeding as set forth in this ruling.
2. CEC members of the CSI Collaborative Staff shall maintain the Commission's privileges and confidential designations, as described above.
3. The Commission does not waive any privileges by sharing information with CSI Collaborative Staff.
4. CEC members of the CSI Collaborative Staff are neither parties nor decision makers for purposes of the Commission's *ex parte* rules.

² Prior to the end of the two-year period, CSI Collaborative Staff may seek relief from this restriction by filing and serving a motion in this proceeding (if still open) and the proceeding in which they wish to participate. In ruling on such a motion, the criteria is to be one of fairness to other parties in the applicable proceeding. If the motion is denied on the basis that the CEC staff possess "inside" information, that staff may participate as appropriate as collaborative staff in the applicable proceeding.

5. CSI Collaborative Staff shall not provide information obtained in the collaborative process to any litigant in any Commission proceeding on issues closely related to the issues addressed in this proceeding, as described above.

Dated June 15, 2006, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda

Administrative Law Judge

ATTACHMENT A
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CPUC Rulemaking 06-03-004

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(END OF ATTACHMENT A)

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Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document current as of today's date.

Dated June 15, 2006, at San Francisco, California.

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